

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JILL WATERS	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	NO. 03-CV-2909
	:	
GENESIS HEALTH VENTURES,	:	
INC.	:	

MEMORANDUM ORDER

AND NOW, this 16th day of December, 2004, it is ORDERED that the Motion For Protective Order to preclude Plaintiff from propounding Plaintiff's Fourth Set of Admissions filed by Defendant Genesis Health Ventures, Inc. (Doc. No. 91, No. 03-cv-2909), is GRANTED. In our Order dated September 21, 2004, we directed that all fact discovery on liability and damages be completed no later than August 9, 2004. (Doc. No. 55.) This Order was the fourth time that we amended the Scheduling Order to accommodate counsel. In our Order dated November 24, 2004, we allowed Plaintiff to depose five additional witnesses after the August 9, 2004, deadline for a narrow and specific purpose, when relevant information concerning alleged discrimination by Defendant came to light after the discovery deadline. (Doc. No. 93.) The Order does not grant Plaintiff carte blanche to seek further discovery in violation of our September 21 Order.

Plaintiff also seeks to re-depose Marvin Kirkland and Carol McQuillan regarding Kirkland's alleged falsification of records to protect an African-American nurse. (Doc. No. 77.) Plaintiff claims she learned of the alleged falsification well after the discovery deadline. (Doc. No. 93.) In our Order of November 24, 2004, we allowed the deposition of the five witnesses

regarding this alleged falsification. (*Id.*) Federal Rule of Civil Procedure 26(e)(1) requires that discovery be supplemented if information later acquired would have been subject to Rule 26(a)(1)'s mandatory disclosure requirements. Fed. R. Civ. P. 26(a)(1); *see Fleet Capital Corp. v. Yamaha Motor Corp.*, Civ. A. No. 1047, 2002 WL 31108380, at *2 (S.D.N.Y. Sept. 23, 2002). It is well settled that the exclusion of evidence is "an extreme sanction, not normally to be imposed absent a showing of willful deception or flagrant disregard of a court order by the proponent of the evidence." *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 905 (3d Cir. 1977). In our November 24 Order, we found that Defendant would not suffer the kind of prejudice that would justify exclusion of five additional witnesses. (Doc. No. 93 at 3.) Per our November 24 Order, we also will permit the limited re-deposition of Kirkland and McQuillan. Each of these depositions may last no more than one and one half hours and may only address the issue of the alleged falsification of records by Kirkland related to the five new witnesses and the impact of such alleged falsification, if any, on Kirkland's separation from Defendant's employ.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, J.